

Remarks/Arguments

This amendment is in response to the Office Action dated March 1, 2006.

Claims 1, 4-6, and 14-21 remain in this application. Claim 3 has been canceled.

Claims 1 and 20 have been rejected under 35 USC 102(b) over Root (US 4,948,564)

Applicants disagree.

Root relates to a plate system that can be used in centrifugation as shown in Figures 8-13. The sheet (120) of Root does not prevent evaporation as is clearly stated in Root at Column 7, 18-20 in that the fit of the nozzles of the sheet is such that a "slight clearance is provided through which any buildup of gas in the well 140 may be vented". Root clearly teaches that its invention allows gas to escape which will cause evaporation of any liquid vapor in that gas.

As the standard for anticipation is one of strict identity and "the reference must teach every aspect of the claimed invention either explicitly or inherently." (MPEP section 706.02IV, lines 6 and 7) and the cited reference has failed to teach the claimed elements of the claim, this reference is not and cannot be an anticipatory reference. As such, the rejection based on 35 USC 102(b) is respectfully requested to be withdrawn as it fails to provide a reference which contains all of the claimed elements of the present claims and therefore no basis for rejection under 35 USC 102 has been properly made.

Claim 1 has been rejected under 35 USC 102(a) by Dunnington et al (US 6,376,256).

Applicants disagree.

The office action states the reference teaches a gasket sheet (17) sealing the upper and lower wells with holes larger than at least the well or capillary, citing Figure 5 of the reference. the

action goes on to say the upper well is a filter in that it retains beads and that the device is useful in a centrifuge citing the paragraph bridging columns 6 and 7.

Claim1 requires a filter be sealed across the opening of the well. Something that is clearly not taught by the reference.

Additionally, the cited paragraph between columns 6 and 7 is silent on centrifugation and fails to cite a centrifuge at all. In fact the following paragraph starting at column 7, line 6 to line 11, says the device is used in a diffusion process which is not by centrifugation.

Lastly, the "gasket" 17 does not appear to prevent evaporation as suggested in the office action and the reference recognizes this by stating that a chemically resistant gasket and glass plate can be placed over the device to retard evaporation (Col 7, lines2-5).

As the standard for anticipation is one of strict identity and "the reference must teach every aspect of the claimed invention either explicitly or inherently." (MPEP section 706.02IV, lines 6 and 7) and the cited reference has failed to teach the claimed elements of the claim, this reference is not and cannot be an anticipatory reference. As such, the rejection based on 35 USC 102(b) is respectfully requested to be withdrawn as it fails to provide a reference which contains all of the claimed elements of the present claims and therefore no basis for rejection under 35 USC 102 has been properly made.

Claims 5, 6, 14-19 and 21 have been rejected under 35 USC 103(a) over Root '564 in view of Root '323 or Guhl et al (US 4,657,867). Applicants disagree.

As to claim 14, the "sheet" 120 of Root does not prevent evaporation as is clearly stated in Root at Column 7, 18-20 in that the fit of the nozzles of the sheet is such that a "slight clearance is provided through which any buildup of gas in the well 140 may be vented". Root clearly teaches that

its invention allows gas to escape which will cause evaporation of any liquid vapor in that gas. It would not have been obvious to one of skill in the art to use the sheet (120) of Root to control evaporation in view of this clear and unambiguous contrary teaching.

The office action states the claims differ from Root in the recitation of a cover having a skirt extending down the side to at least the collection plate and then goes on to say Root teaches a cover (202) as shown in Figures 14 and 15 that does not have a skirt. Applicants also point out their invention involves the use of a centrifuge which the embodiment of Figures 14 and 15 of Root does not use. In fact that embodiment relates to a positive pressure device. The embodiment of Root relating to a centrifuge (Figures 8-13) does not teach or suggest a cover at all.

As to claim 21, as stated above the "sheet" of Root allows for evaporation to occur and specifically requires that it be able to do so to prevent an overpressure in its system. Root fails to teach or suggest the elements of the improvement clause of claim 21. Applicant sees no admission as stated by the office action and asks that the specific language of Claim 21 be cited which forms the basis for that rejection or else it be withdrawn as being unsupported.

Moreover, claim 21 requires the evaporation control device be in two forms both a sheet between the plates and a cover on top of the plates in a centrifugal device. Root for the reasons stated above fails to teach either never mind both elements being used to control evaporation in a centrifugally driven device.

Root '323 is stated to teach a skirt in Figure 14 and it would have been obvious to use the skirt of Root '323 in Root '564. However the embodiment of Root '564 which uses a cover is not the centrifuge embodiment. The centrifuge embodiment of Root '564 contains no cover and teaches using a sheet that allows for gas to escape from the device creating not eliminating evaporation.

There is no suggestion or motivation in the references to consider the cited combination absent the teachings of the present invention. In fact there is a contrary teaching in Root'564 that one must allow the device to exhaust gas and thereby cause evaporation in order to prevent a buildup of gas when using the device in a centrifuge. One of ordinary skill in the art in view of this clear teaching would not have looked to a cover of Root '323 to inhibit evaporation as it too would inhibit gas release which Root '564 teaches is important to prevent other problems. The office action is asking the skilled artisan would to ignore the Root '564 disclosure regarding the use of a device that allows for gas to escape, focus only on the cover of Root '323 itself, and somehow arrive at the conclusion that the Root '564 device could use a cover to prevent gas loss and evaporation.

As stated by the Federal Circuit in *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1986), "One cannot use hindsight reconstruction to pick and choose from isolated disclosures in the prior art to deprecate the claimed invention."

Of similar import is *In re Wesslau*, 147 U.S.P.Q. 391, 393 (CCPA 1965):

"It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art." (Emphasis added).

As such a prima facie case of obviousness has not been established and the rejection has been overcome.

The office action states that Guhl teaches that the use of a cover is well known in multiwell plates for among other things "ventilation" citing Guhl at Column 1, lines 25-53. As with Root'564 the prior art is desirous of making sure gas can move into and out of the devices and evaporation occurs along with that movement as is stated by Guhl which tries to reduce it through the use of labyrinth passages.

The present invention is directed to the exact opposite proposition; limiting gas movement and

eliminating evaporation when using a multiwell device in a centrifuge. The prior art fails to teach or suggest such an invention and is directed exactly opposite to the present invention in that they encourage air movement and hence allow evaporation to occur which would only be enhanced by the centrifugal action used in the present invention.

The office action states the length of the device is of ordinary design to one of ordinary skill in the art. Applicants disagree. The lengths claimed are specific to those that prevent evaporation and as such are patentable.

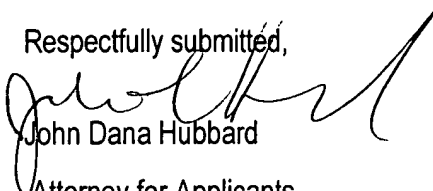
Claim 4 has been rejected under 35 USC 103(a) over Dunnington. The action argues the hole of the reference is larger than the capillary and about the same size as the bottom well which differs from the present claim. However the action argues the actual size is a matter within the capability of the ordinary person skilled in the art to make. Applicants disagree.

The hole size is important for centrifugal applications in that it minimizes the space between the wells and provides for good alignment of the wells. Additionally in centrifugal applications it provides the maximum coverage of the interface between the plates so that if the forces imposed upon the device by the centrifuge cause any shifting, the wells interface is still protected. this would not have been obvious to one of ordinary skill in the art from the cited reference and as such is believed to be patentable over it.

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Reconsideration and allowance of the remaining claims is respectfully requested in view of
the foregoing amendment and remarks.

Respectfully submitted,



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